

TO: ZBA

RE: SUMMARY OF CONDITIONAL USE PERMIT
STANDARDS - MISSING ANSWERS OR NOT ADEQUATELY
ADDRESSED BY APPLICANT

DATE: 9/8/2015

After reviewing the general standards and conditional use standards in the Halifax Zoning Code, there appear to be some important general and specific conditions that have not even been addressed or adequately addressed due to lack of testing.

A previous 2014 court case denying a quarry in Randolph, Vermont, overturned a local permit approval because their DRB (ZBA) depended on conditions that were, “impermissibly vague” and not understandable.

In other words, the precedent is set that the DRB (ZBA) must set high standards on which to base their deliberations. Submitted materials from an applicant, opposition and conditions imposed by the ZBA must be complete and proven.

As you know, before making any decision concerning the issuance of a conditional use permit for the

Denison/Ashfield quarry project, these conditions should be reached through proven or tested data.

UNDER THE GENERAL PERFORMANCE STANDARDS OF THE HALIFAX ZONING CODE- SECTION 405:

CONDITION #1. Noise in excess of 70 decibels –

There is no test to accurately demonstrate the sound experienced from truck brakes and acceleration to the historic home on the corner of TH2 and Jacksonville Stage Road. Does the noise exceed 70 decibels?

A comparison chart shows that 70 decibels is equal to a vacuum cleaner at 3 meters.

CONDITION #3. Emissions of dust or other particulates that cause soiling beyond the property boundary...and the operation must not cause an unhealthy situation for adjoining property owners.

There is no actual on- site test of soil and dust composition which could impact the air and water quality.

The application mentions that quartzite is present in a memo dated 2/10/2015 from the applicants' experts.

Silica is a mineral found in quartzite. Silica has been proven to cause lung cancer.

According to the Control of Substances Hazardous to Health Regulations, in 2002 the regulations amended the control of exposure to silica that may be inhaled. The reason stated was that breathing in dust that contains silica may cause silicosis.

The fact that silica is contained in the schist, should call for an actual onsite test of soil and dust emitted by the sawing and cutting of the schist. Prevailing wind conditions should also be tested and added to the information needed to reach a decision based on fact.

In a 2010 court case in Moretown, Vermont, one of the reasons the Environmental Court denied the quarry permit was that, the District Commission denial was based on raised concerns about silica dust. There was a lack of detail on how water should be used to suppress dust and a lack of testing as to how prevailing winds may affect the flow of air pollutants, at least to the closest neighbors.

Another concern is the suppression of dust mixed with silica, especially along the 2200 foot dirt road circling above the pit and closest to my property. The application mentions some sort of device over the saw to catch dust particles and a vacuum of some sort and a mister. Yet no photo of these devices or their performance statistics are provided for further accurate assessment.

The hand saw being used to cut through the rock is supposed to be constantly sprayed by water when in use. This important dust suppression measure is not shown or mentioned. Where is the source of the water suppressant and is the supply adequate? How will it be delivered? Facts are called for before a decision.

The information from the application is “impermissibly vague”.

There is also no mention of the soil composition with potential silica present in the runoff that is to be contained in the retention pond.

The application mentions that the sludge in retention ponds is to be used to wet down any dust generated. Is there enough of the sludge to effectively wet down the

dust from the pit on the 2200 foot road above the pit that could be stirred up by wind and truck traffic? Are there any toxins mixed with the sludge? How will the sprayed water be delivered? None of these potential mitigating concerns are adequately addressed.

Condition #7 - Existing potential fire, explosion or safety hazard – cannot exist.

The application states that gas, oil and other lubricants will be present on site. The very fact that a 50 year commercial use that contains flammable materials and is creating consistent friction by the use of a saw through hard rock in the middle of 1800 acres (Denison and Burland) of forest with only one egress and ingress, 4 miles from a paved road automatically increases risks to the safety for our firefighters, neighbors, workers, and the very reason for a Conservation District.

Over the next 50 years, a dry year or a spark on a windy day would result in a catastrophe. If the wind changes direction, our firefighters could be trapped or worse.

Yet, the application does not even address how much water for fire suppression will be available, if the

retention pond would be adequate for fire suppression or how water will be sprayed for suppression on site if the fire spreads.

Fire extinguishers would not be enough on a windy, dry day. There are no written answers to demonstrate how the flammable products will be stored, delivered and used.

Honestly, this safety issue should be the most important issue to be addressed. It is sorely lacking and appears “impermissibly vague.”

CONDITONS #8 , #9, #10 - No storm water discharge or leaching... into groundwater... should occur off sight –

As the closest well owner (#174), I am concerned there has been no actual onsite testing of the depth to groundwater and the composition of soils specifically under the retention pond.

This concern arises because the application refers to the depth of neighbors’ wells that have been dug around the site to estimate the depth to groundwater on his site. These depths were averaged to be 30’ deep. Yet my well,

which is the closest to the quarry, is 300 feet deep and 200 feet under the depth of the retention pond.

There is no impervious lining to be placed on the bottom of the ponds to avoid leaching into the groundwater. The depth, flow, composition of runoff (including silica concentrations) and porosity can be determined by using actual test hole data. Then hard facts can be used in reaching any decisions instead of using the vague information from the February 10th and 12th memos from VHB.

For example, the professional memos and comments by the applicant concerning this issue are sprinkled with phrases like, "generally speaking, as far as I know, highly unlikely, estimated, usually, from my perspective, impacts to be likely...etc. Are these phrases, "impermissibly vague?"

ARTICLE 5 SPECIAL REGULATIONS: SECTION 501-EARTH AND MINERAL EXTRACTION

As you know, the following potential quarry project impacts cannot be adopted until it is proven by the

applicant with facts and figures not to have a negative impact.

CONDITION #3, #8 and #9. “The operation will not cause unreasonable soil erosion and will not result in the reduction of the capacity of the land to hold water...” –

This concern is raised because the Windham Regional Planning Commission has voiced concerns about the reclamation plan and about the potentially inadequate \$10,000 escrow account. The WRCs’ other concern is the potential result of forest fragmentation. Where is an adequate break down of costs to revegetate? The applicants’ comments are vague on this financial issue.

The application addresses coverage over the reclaimed soil as, “vegetation that will grow back naturally” and compares the impact of a 50 year working quarry pit as the same as selective forestry. Where are the facts to support this vague conclusion?

The judge in the Moretown quarry denial found that these two commercial uses are not comparable because forestry does not last continuously for decades.

CONDITION #4. The project will not adversely affect streams, etc.

It is noted in a memo from the VBNR that a Class 1 perennial stream running through the site will be impacted by the reduction of the required 50 foot buffer along a Class 1 perennial stream. The applicant replied that this encroachment was unavoidable. Yet the denial in the Moretown quarry permit incorporated the fact that the 50 foot buffer was not maintained.

CONDITION #5. The project will not cause unreasonable traffic congestion, unsafe conditions... damage to roads and bridges (culverts) existing or proposed in the area –

This serious safety concern raises many issues that have not been answered or are in the process of finding the required facts, such as identifying the Town costs for mitigation of hazards to road safety, especially on Stark Mountain Road.

Accurate, comprehensive annual costs to the taxpayers in Halifax for the maintenance and repair of damages caused by quarry trucks to Halifax public roads should be

ascertained. The applicant has consistently insisted that he will not pay for any repairs to our public dirt roads.

There is also confusion concerning how many trips the quarry trucks will be making. A memo dated December 31st, 2013 from the applicant's expert, states that up to 10 loaded truck trips (20 total trips) will be the maximum per week.

The application stresses 5 loaded trips (10 total) but his road trip numbers double and weight of loads triple when you look closely at the applicants' confusing data.

There is an unavoidable risk to safety for a driver and passengers upon meeting a quarry truck when parts of Stark Mountain Road are only 16 feet in width with a deep ravine one side of the steep, winding road and a cliff on the other.

The fact that the applicant refuses to provide a photo of a prototype truck used for hauling schist is a serious breach of what must be submitted in order to reach accurate impacts to safety, road damages and noise.

No one is asking him to buy or rent a truck to show us the size and weight of a prototype, a statement he insists on repeating as an excuse.

At a January 31st, 2015 Selectboard meeting, Brad Rufus, Road Commissioner, stated for the record that a town truck has a very different weight distribution than a quarry truck. The photo of a town truck currently submitted by the applicant is not valid. Therefore, no accurate decisions can be made until these important safety and cost concerns are realistic and can be accurately demonstrated.

To emphasize the importance of this road safety issue, two members of the Selectboard voiced their safety concerns for the public record at a meeting on January 31st, 2015 when they stated that Stark Mountain Road is an “alpine slide” and that a driver would be “lucky” to find a pull off when a quarry truck is heading in the opposite direction toward their vehicle.

Finally, the applicant has stated that a flatbed truck might be used. This would force another vehicle to back up (even a horse trailer) and /or move over (If there is

room) because on tight turns by the flatbed truck their lane width could be compromised.

Can anyone making a decision on this safety condition say with certainty that this risky situation will never happen over a 50 year period?

CONDITION #6. The project will not have an adverse impact on the natural beauty and aesthetics of the area...

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Please review the attached issue of aesthetics which sets a court standard based on the 2010 Moretown denial.

The project is in a Conservation District with 15 acre zoning. The Town Plan states that the purpose of this District is to “protect natural resources that are essentially undeveloped and lack direct access to arterial or collector roads.”

To emphasize the importance of reducing the impacts of development, the Town Plan further states that, “the interior of the Conservation District should remain in its’ natural state.”

In addition, the uses in the Town Plan do not mention excavation and mining as a use in a Conservation District.

Noise generated by the quarry trucks at the corner of TH 52 and Jacksonville Road is estimated to be in excess of 70 decibels when applying brakes and accelerating exceeding the Town standard.

A noise test on site would answer that concern and address the noise standard of 70 decibels that must be maintained in order to be granted a CUP. Until a noise test is administered, the conclusion is “impermissibly vague”.

CONFORMANCE TO TOWN PLAN:

The Selectboard has written to the file that quarry use in parts of the Town Plan is not in conformance. Because those parts concern the use of a quarry in a Conservation District, there may be four options available in making a decision on the quarry permit request.

One choice is to deny the permit as submitted because along with other conditions, conformance to the Town Plan has not been met.

If the ZBA decides after discussion that the application is incomplete because there is not enough information or the responses from the applicant are too “vague” to

make an informed decision and the applicant refuses to accurately answer the information that is vague, deny the application without prejudice as currently submitted.

Another option is to deny the quarry permit without prejudice until the Town Plan is revised to conform to a quarry use in the Conservation District. If that revision is supported by the residents, then revisit the application.

A third option is to approve the quarry permit even though a quarry is not a recommended use in the Conservation District and does not therefore conform to the Town Plan.

The result here would probably be an expensive lawsuit that the Town must defend.

Thank you for your hard work and commitment.

Deb Foster

